UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

DWORSKY'S ENVIRONMENTAL SERVICES[1]

Employer

and

Case 6-RC-12378

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 459, AFL-CIO, CLC[2]

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Dworsky's Environmental Services, is engaged in providing janitorial services to commercial customers. The Employer employs approximately 19 employees who provide janitorial services at 14 separate locations. The Employer's office is located in Reynoldsville, Pennsylvania, in the home of its sole owner, Thomas Dworsky. The Employer has several site operations in Pennsylvania. The Shawville location, where the three employees in the petitioned-for unit work, is a coal-fired power plant. The Employer also performs janitorial services at worksites in Falls Creek, Summerville, DuBois, Reynoldsville, Sykesville and Clearfield. The Petitioner, International Brotherhood of Electrical Workers, Local 459, AFL-CIO, CLC, filed a petition, as amended at the hearing, with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time employees employed by the Employer at its Shawville, Pennsylvania, worksite; excluding office clerical employees and guards, professional employees

[1] The name of the Employer appears as amended at the hearing.

[2] The name of the Petitioner appears as amended at the hearing.

and supervisors as defined in the Act, and all other employees. A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the issue of whether a unit limited to the Shawville location is appropriate. Contrary to the Petitioner, the Employer asserts that the only appropriate unit is one which encompasses all employees performing janitorial functions not only at the Shawville location but also at all of the Employer's other worksites. The parties are, however, otherwise in accord as to the composition of the petitioned-for unit.

There is no history of collective bargaining for any of the employees involved herein.

In this case, the Petitioner is seeking a single-location unit, a unit comprised of all employees at the Shawville location. When a labor organization seeks a single-location unit, such a unit is presumptively appropriate under Board law, and it is the employer's heavy burden to rebut that presumption if the employer asserts that a multi-location unit is the only appropriate unit. I have considered the evidence presented by the parties on this issue. As discussed below, I have concluded that the petitioned-for unit, a unit limited to employees employed at the Shawville location, is appropriate for the purposes of collective bargaining and that the Employer has not met its burden in establishing that this unit is not appropriate. Accordingly, I have directed an election in the unit petitioned for herein.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

As discussed previously, the Employer is engaged in the business of providing janitorial services to commercial customers. The Employer has been existence since 1996. At least initially, the Employer has written contracts with its customers usually for a period of 1 to 2

years, to perform ongoing janitorial services.[3] The contract by which janitorial services are provided at the Shawville location is between the Employer and Reliant Energy.[4]

The Employer is under the overall supervision of sole owner Thomas Dworsky. Reporting to Dworsky is John McIntyre, who is referred to in the record as head foreman.[5] The record indicates that the Employer has onsite supervisors at 3 of its 14 worksites who report to McIntyre or Dworsky. Supervisor Jason Pentz is the onsite supervisor at the Shawville location.[6] As such, Pentz has the authority at the Shawville location to enforce work schedules, grant time off and settle minor disputes between employees.[7]

At the time of the hearing, there were 3 full-time janitorial employees employed at the Shawville location.[8] At the Employer's other worksites, 11 of its employees are part-time workers. Head Foreman McIntyre and his helper work full time as they travel among the worksites to clean floors.

The Employer has one part-time employee assigned to work 6 to 7 hours per night at a brick manufacturing plant in Summerville. At the Falls Creek location, one part-time employee is assigned to provide janitorial services two days per week at a powdered metals plant. In Reynoldsville, the Employer provides services at 4 locations, 3 medical centers and a bank. Two part-time employees cover all 4 facilities, working an average of 4 hours per night. At

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[3] The record indicates that at certain locations, the Employer does not require its contracts to be renewed in writing unless a change in the terms is needed.

[4] The term of the contract is from August 2003 to July 2005.

[5] McIntyre has held this position for approximately three years. Prior to that time, McIntyre performed janitorial work at one of the Employer's locations. When the Employer lost its contract at that site, Dworsky promoted McIntyre to head foreman. McIntyre now travels among the various locations with helper, Paul Ward. In addition to his oversight duties, McIntyre's primary function is to clean, buff and wax the floors at the various work sites with Ward.

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[6] The parties stipulated that Pentz is a supervisor within the meaning of Section 2(11) of the Act based on his authority to independently direct the work of the employees at the Shawville location.

[7] Pentz has no supervisory authority at any other location.

[8] The record reveals that offers of employment had been accepted by two individuals who were scheduled to begin working during the week following the hearing in this matter.

Sykesville, one part-time employee works a couple hours per night to clean a bank. In DuBois, one full-time employee is assigned to a powdered metals plant and a laundry, three part-time employees work about 4 hours per night at a plant which refurbishes meters and two part-time employees work at two medical centers. One part-time employee works about 2 ½ hours per night performing work at a medical center in Clearfield.

With respect to employee interchange, the record indicates that McIntyre and his helper, Paul Ward, perform floor buffing and waxing at each of the Employer's worksites and, at times, also perform other extra duties.[9] To perform such duties, McIntyre travels to the Shawville location every 2 to 3 months. The Employer asserts that McIntyre and Ward will fill in at the Shawville location in case of a call-off or other absence. The record reflects that between mid-February 2004, and July 30, 2004, McIntyre and Ward worked a total of eleven days at the Shawville location. Dworsky admitted that the two were primarily at this location to work on the floors. Although Dworsky testified that Ward may have helped out when one of the Shawville employees was off, he was unable to identify any specific date on which this occurred.

The only other evidence of employee interchange between employees working at Shawville and elsewhere occurred approximately one year ago. At that time, one of the employees assigned to the Shawville site split her time between the Shawville location and the medical facility in Clearfield for a period of about two weeks. This was necessitated by the fact that the employee who had been working at the Clearfield location left and the Employer had to hire a replacement.

As to interchange among the Employer's other facilities, the record indicates that approximately 1 to 1 ½ years ago, the Employer lost a contract at a Falls Creek location. Three of the four employees[10] working there were able to be placed at nearby worksites in DuBois and

[9] The record does not reflect the exact nature of the extra duties.

[10] The fourth employee was laid off.

Reynoldsville.[11] The record establishes that the Employer will offer reassignment depending on whether there is an opening at another location and whether the employee involved is willing to be reassigned. Otherwise, there are no bumping rights between locations.

The employees working at the Employer's Shawville location perform tasks of cleaning the lunchroom, restrooms, offices, entrances, wash stations and windows at the power plant. Admittedly, by virtue of the nature of the operation of the power plant, heavier cleaning is necessary at the Shawville site than at other locations,[12] and the employees assigned to Shawville are all full-time employees. The employees at other worksites perform the same type of cleaning tasks, but it appears from the record that such tasks can be completed in less time inasmuch as the vast majority of the Employer's employees are part-time employees.[13]

Compensation and benefits are centrally determined by Dworsky. All employees receive the same starting wage rate with a 25-cent per hour raise after 90 days. Full-time employees enjoy certain paid holidays, one week of paid vacation and are offered health insurance, 70 percent of which is paid by the Employer. All employees receive similar training and no uniforms are required at any of the Employer's work locations. Dworsky handles any scheduling changes and he will determine whether a replacement should be sent to a work location in case of call-off or other absence.

The record also indicates that one of the Employer's employees performs customer service functions are various facilities. This duty involves visiting each work location periodically to check on employees' work and to see if there are any customer complaints which are then reported to Dworsky. The record establishes, however, that the individual who performs these

[11] The distance between Falls Creek and these locations is 3 and 7 miles, respectively.

[12] Dworsky described the Shawville worksite as a "big, nasty, dirty place."

[13] As noted, there is one full-time employee assigned to a powdered metals plant and a laundry in DuBois, and McIntyre and Ward work full time as they perform floor work at all locations.

functions has never visited the Shawville worksite, in part, because Pentz is present there to handle such issues.

All of the Employer's worksites, except Clearfield, are 35 to 45 miles from the Shawville location. The Clearfield worksite is about 6 miles from Shawville. As noted, there is no bargaining history for any of the employees involved herein.

II. THE APPROPRIATE UNIT

The Board discussed its principles regarding appropriate units at length in Overnite Transportation Company, 322 NLRB 723 (1996). The Board stated that it is well settled that employees of an employer may be appropriately grouped in more than one way for the purposes of collective bargaining, and that the Board's policy is to consider first whether the petitioned-for unit is appropriate. "There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be 'appropriate.'" Overnite Transportation Company, supra, quoting Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951). Thus, a union is not required to seek the largest or most comprehensive grouping of employees, so long as the unit requested is an appropriate one. Overnite Transportation Company, supra.

It is well established that when a union seeks a presumptively appropriate single location unit, it is the employer's heavy burden to present evidence rebutting the presumption that such a unit is appropriate for collective-bargaining purposes. E.g. Trane, 339 NLRB No. 106 (2003); Cargill, Inc., 336 NLRB 1114 (2001); R. B. Associates, 324 NLRB 874 (1997). To rebut the presumption, the employer must demonstrate that the single-facility unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. Trane, supra; Cargill, Inc., supra; J & L Plate, Inc., 310 NLRB 429 (1993). However, the Board "has never held or suggested that to rebut the presumption, a party must proffer 'overwhelming evidence . . . illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to show that 'the separate interests' of the

employees sought have been 'obliterated.'" Trane, supra, at p. 2, citing Petrie Stores Corp., 266 NLRB 75, 76 (1983).

To determine whether a single-facility presumption has been rebutted, the Board examines a number of community of interest factors, including (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions and working conditions; (3) degree of employee interchange; (4) distance between locations; and (5) bargaining history, if any exists. Trane, supra; Cargill, Inc., supra; J & L Plate, Inc., supra.

To prevail in its argument that a single-location unit is not appropriate, particularly in circumstances where a geographical separation between or among locations exists, where there is an absence of any bargaining history, and where no labor organization is seeking to represent a more comprehensive unit, a crucial factor is whether the employer has affirmatively established a lack of local autonomy over labor relations. The extent of evidence sufficient to establish a lack of local autonomy is determined on a case-by-case basis and is inextricably intertwined and must be analyzed with the degree of the presence or absence of evidence supporting or not supporting other aspects of the presumption.

The presumptive appropriateness of a petitioned-for single location unit has been rebutted where the evidence demonstrated the complete lack of any separate supervision or other oversight at the petitioned-for location and where the evidence further demonstrated common supervision at all facilities, centralized control over daily operations, identical skills, duties and other terms and conditions of employment among employees and regular contact between employees employed at the facilities. These factors, in the Board's view, outweighed several factors which favored the single-facility presumption—geographical distance and lack of specificity as to the level of interchange. E.g. Trane, supra; Waste Management Northwest, 331 NLRB 309 (2000); R & D Trucking, Inc., 327 NLRB 531 (1999).

Conversely, the Board has also held that where local autonomy exists, the evidence of centralized administration, operational integration, common benefits and personnel policies, common job classifications, and centralized direction of labor policy, including top level constraints on local supervision are insufficient to rebut the finding of the appropriateness of a single-facility unit, particularly where, as here, interchange is minimal. E.g. Cargill, Inc., supra; J & L Plate, Inc., supra; Red Lobster, 300 NLRB 908, 912 (1990); Bowie Hall Trucking, 290 NLRB 41 (1988); New Britain Transportation Co., 330 NLRB 397 (1999); AVI Foodsystems, Inc., 328 NLRB 426 (1999); Esco Corp., 298 NLRB 837 (1990).

For example, in Cargill, the Board found that local autonomy was established where each facility had its own supervisory staff who made assignments, supervised work, scheduled maintenance inspections, scheduled vacations, imposed discipline and handled employee complaints. In New Britain Transportation Co., local autonomy was found to exist where local dispatchers set schedules, approved time off, and training was conducted on a site to site basis. In Esco Corp., the Board found sufficient local autonomy even in the absence of a statutory supervisor assigned to the site sought by the petitioner in that case. However, the Board found significant the fact that the employer relied on a leadman to oversee the operations at the petitioned-for warehouse operation. The Board relied on this "limited local autonomy" as well as the fact that there was little or no contact between employees of the two facilities and on the fact that the facilities were separated by a great distance in finding that the single-facility presumption remained unrebutted.

Analyzing the facts presented here in light of the applicable criteria that a single-location unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity, I find that the Employer has not met its heavy burden in presenting evidence rebutting the presumption.

While I recognize that there is centralized control over labor relations through Employer Owner Dworsky and an overall similarity of job skills between the worksites, such factors are

insufficient to overcome the single location unit presumption in the circumstances presented here. Sufficient local autonomy exists at the Shawville location in that Pentz independently directs the work force, and has authority to grant time off and settle minor disputes among employees. It further appears that Pentz checks employees' work, and handles or transmits to Dworsky any customer service issues. Finally, Dworsky admitted that he would generally act on Pentz' recommendation in case of employee misconduct. See Rental Uniform Services, Inc., 330 NLRB 334 (1999).

Although all of the Employer's employees provide the same type of janitorial services, the conditions under which the services are provided at Shawville are different in that the power plant is large and very dirty due to the nature of the operation there.

Moreover, there is minimal evidence of employee interchange between the employees assigned to Shawville and elsewhere. The most significant occurrence of interchange happened approximately one year ago for a limited two-week period when one of the Shawville employees split time between the Shawville site and the Clearfield site until a replacement could be found. In its brief, the Employer asserts that employees from other worksites regularly provide services at the Shawville site. However, the record shows that McIntyre and his helper at times come to Shawville not to provide the routine janitorial services performed by the employees assigned there, but primarily to perform polishing and cleaning of floors or to perform other extra duties. These two individuals are not regularly assigned to Shawville and there is no specific evidence to show that either has filled in and performed janitorial work on other than an isolated or infrequent basis.

Finally, there is a geographic separation of 35 to 45 miles between Shawville and all of the other worksites except the Clearfield location, and there is no bargaining history for any of the employees involved herein. Both of these factors, as well as the evidence establishing sufficient local autonomy and minimal employee interchange, favor the finding that the single-

location unit petitioned-for herein is an appropriate unit. Accordingly, I find that the Employer has failed to meet its burden to rebut the single-location presumption.[14]

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by the Employer at its Shawville, Pennsylvania, worksite; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

IV. DIRECTION OF ELECTION

[14] I have considered the Board's decisions in Dattco, Inc., 338 NLRB No. 7 (2002) and Budget Rent A Car Systems, Inc., 337 NLRB 884 (2002). In Dattco, the Board, contrary to the administrative law judge, found that the employer rebutted the single facility presumption. In that case, the Board's conclusion rested on its finding that there was substantial employee interchange between the Hartford school bus terminal and eight other terminals in cities and towns in Connecticut. The Hartford facility served in the unique capacity of a labor pool for other facilities resulting in about one-third on the employees is the petitioned-for unit working, on a daily basis, in other terminals and being supervised by other terminal managers. The instant case is factually distinguishable in that the record herein establishes that employee interchange is, at best, infrequent or sporadic. Employees assigned to Shawville rarely, if ever, work at other locations. In Budget Rent A Car Systems, Inc., the Board, contrary to the regional director, found the single facility presumption had been rebutted noting the lack of separate local management, the significant amount of functional integration and employee contact among the five local market branches and the incidents of temporary and permanent transfers among five branches. As fully discussed above, these factors are not present in the instant case.

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 459, AFL-CIO, CLC. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior

Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **September 28, 2004**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the

election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **October 5, 2004**. The request may **not** be filed by facsimile.

Dated: September 21, 2004

/s/ Gerald Kobell
Gerald Kobell, Regional Director

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